STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 15, 2014
v	No. 313705 Saginaw Circuit Court
CHRISTOPHER MARK MARTIN, Defendant-Appellant.	LC No. 10-033870-FH

Before: SHAPIRO, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Defendant appeals by right from his jury trial conviction for operating a motor vehicle under the influence of alcohol causing serious injury, MCL 257.625. He was sentenced, as a second habitual offender, MCL 769.10, to a prison term of 36 to 90 months with credit for 36 days served. Because defendant has not established evidentiary error, a *Miranda* violation, or the incorrect application of the sentencing guidelines, we affirm.

The victim was injured when the car defendant was driving, in which she was a passenger, struck a culvert and caught fire. Both defendant and the victim were unconscious when they were removed from the vehicle. Lab analysis of blood drawn from defendant indicated that he had a blood alcohol content of 0.11 grams of alcohol per 100 milliliters of blood. The victim suffered extensive injuries, was in a coma for four months, and was still under the care of a guardian at the conclusion of the trial. Among her injuries are loss of functionality, a brain injury, memory problems, and disfigurement.

Defendant first assigns error to the admission, over objection, of certain testimony by the police officer who questioned him at the hospital following the accident. The officer testified that defendant told him that he drank four to five beers approximately an hour to an hour and a half before the crash. Defendant argues that the statement made to the officer was not voluntary and that his *Miranda*[1] rights were violated. Our review of the voluntariness of a defendant's statement is independent of that of the trial court. *People v Sexton*, 461 Mich 746, 752; 609 NW2d 822 (2000). However, we will affirm the trial court's decision unless we are left with a

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

firm and definite conviction that a mistake was made. *Id*. Also, deference is given to the trial court's resolution of a disputed factual question turning on the credibility of witnesses or the weight of the evidence. *Id*.

Defendant contends that he was vulnerable as a result of injuries sustained in the crash and that he was in a state of shock. Defendant asserts that the officer who spoke to him in the hospital was aware of his vulnerability and took advantage of him, rendering his statement involuntary. Admitting an involuntary confession into evidence violates a defendant's due process rights. *Lynumn v Illinois*, 372 US 528, 537; 83 S Ct 917; 9 L Ed 2d 922 (1963); *People v Conte*, 421 Mich 704, 722; 365 NW2d 648 (1984). For a confession to be deemed "involuntary," the defendant's "will must be overborne at the time he confessed." *Lynumn*, 372 US at 534.When determining the voluntariness of a statement, a court looks to the totality of the circumstances to see if the confession was given voluntarily and was the product of the defendant's own free will. *People v Cipriano*, 431 Mich 315, 319; 429 NW2d 781 (1988). There must be some demonstration of overreaching or coercion by the questioning police officer for a confession to be deemed involuntary under the Due Process Clause of the Fourteenth Amendment. *Colorado v Connelly*, 479 US 157, 163-164; 107 S Ct 515; 93 L Ed 2d 473 (1986).

We find that the police did not coerce defendant into offering the challenged statement. This case is analogous to *People v Scanlon*, 74 Mich App 186, 188; 253 NW2d 704 (1977), where the defendant confessed to committing a crime when questioned by a police officer while the defendant was hospitalized following a car accident. The defendant was deemed alert to the situation by the trial court, despite having been medicated. *Id.* This Court reasoned that the trial court's conclusion that the confession was voluntary was not clearly erroneous. *Id.* at 189. Similarly, there is no indication in the case at hand that defendant's response was involuntary due to medication he was receiving in the hospital. Moreover, the officer who spoke to him in the hospital testified that defendant appeared alert and coherent and appeared to understand the officer's questions. The officer also stated that he first asked a nurse whether defendant "was okay to talk to or if he would be able to." There was police testimony that defendant appeared to be in shock, but this opinion was based on defendant's mental state at the accident scene, not after he had been hospitalized. Thus, the trial court did not err by admitting defendant's statement. See also *United States v Robertson*, 19 F3d 1318, 1320 (CA 10, 1994) (concluding that no coercive actions were used by law enforcement personnel when questioning the defendant after he had been in a coma for 31 days).

We also find that defendant's *Miranda* rights were not violated. *Miranda* warnings are required before questioning when a person is in custody or otherwise deprived of freedom, based on the totality of the circumstances. *People v Mendez*, 225 Mich App 381, 382-383; 571 NW2d 528 (1997).

> An officer's obligation to give *Miranda* warnings to a person attaches only when the person is in custody, meaning that the person has been formally arrested or subjected to a restraint on freedom of movement of the degree associated with a formal arrest. *Stansbury v California*, 511 US 318, 322; 114 S Ct 1526; 128 LEd2d 293 (1994). "It is now axiomatic that *Miranda* warnings need only be given in cases involving custodial interrogations." *People v Anderson*, 209 Mich

App 527, 532; 531 NW2d 780 (1995). [*People v Peerenboom*, 224 Mich App 195, 197-198; 568 NW2d 153 (1997).]

The officer testified that defendant was not in custody when he spoke to him in the hospital. Defense counsel asked the officer a series of questions about the setting, but they all went to defendant's medical condition. Because there is no indication that defendant was in custody when he was spoken to at the hospital, *Miranda* warnings were not required. *People v Kulpinski*, 243 Mich App 8, 26; 620 NW2d 537 (2000).

Lastly, defendant argues that the trial court improperly scored offense variable (OV) 4 at ten points. "Under the sentencing guidelines, the circuit court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence." *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). "Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo." *Id.*

Under MCL 777.34(1)(a), OV 4 is to be scored at ten points where "[s]erious psychological injury requiring professional treatment occurred to a victim." Whether or not treatment has been sought is not conclusive. *People v Wilkens*, 267 Mich App 728, 740; 705 NW2d 728 (2005).

Defendant argues that there is no evidence in the record to support the trial court's score. The victim did not speak at defendant's sentencing. However, the victim's mother/guardian testified that the victim "takes therapy almost every day," suffers from short-term memory loss, has incurred "two brain injuries" that require yearly neuropsychological evaluations, and that a "psychologist indicated that [the victim's mental state] is close to retardation." The mother also stated that the victim "is not even allowed to make some decisions that a 41 year old person should be able to make. That is degrading to her also." The victim has also been diagnosed with depression since her injuries. Given this testimony, the trial court did not err by concluding that the victim suffered "[s]erious psychological injury requiring professional treatment[.]" MCL 777.34(1)(a). Accordingly, the trial court did not err by scoring OV 4 at ten points.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens